

Department of Veterans Affairs

§ 3.900

shall not be made for any period prior to the date on which the estate was reduced to less than \$10,000, or a criterion of paragraph (a) (1) or (2) of this section was no longer met.

(c) If a veteran denied payment of compensation under paragraph (a) of this section is subsequently rated competent for more than 90 days, the withheld compensation shall be paid to the veteran in a lump-sum. However, a lump-sum payment shall not be made to or on behalf of a veteran who, within such 90-day period, dies or is again rated incompetent.

(d) The compensation payments to an incompetent veteran who is hospitalized, institutionalized, or domiciled by the United States, or any political subdivision thereof, are subject to the provisions of § 3.557 of this part.

(Authority: 38 U.S.C. 5505)

[56 FR 65853, Dec. 19, 1991]

§ 3.854 Limitation on payments for minor.

Benefits will not be authorized to a fiduciary recognized or appointed for a child, by reason of its minority, for any period subsequent to the day preceding the date on which the child will attain its majority under the law of the State in which the child resides. Payments on or after that date, if otherwise in order, will be made direct to the child, if competent, or, if incompetent and direct payment under § 3.850 is not in order, to a fiduciary appointed for the child as a mentally incompetent adult.

[39 FR 34533, Sept. 26, 1974]

§ 3.855 Beneficiary rated or reported incompetent.

(a) *General.* Payments being made directly to a beneficiary who is or may be incompetent will not be routinely suspended pending certification of a fiduciary (or a recommendation that payments should be paid directly to the beneficiary) by the Veterans Services Officer or development of the issue of incompetency.

(b) *Application.* This policy applies to all cases including (but not limited to) the following:

(1) Notice or evidence is received that a guardian has been appointed for the beneficiary.

(2) Notice or evidence is received that the beneficiary has been committed to a hospital.

(3) The beneficiary has been rated incompetent by the Department of Veterans Affairs.

[42 FR 2069, Jan. 10, 1977]

§ 3.856 Change of name of female fiduciary.

If a female fiduciary receiving benefits in such capacity marries or is restored to her former name by divorce decree, her statement setting forth her present name may be accepted.

[39 FR 34533, Sept. 26, 1974]

§ 3.857 Children's benefits to fiduciary of surviving spouse.

Where children are separated from the surviving spouse by reason of her (or his) incompetency, no apportionment is required. All amounts payable on behalf of the children may be paid to the fiduciary of the surviving spouse provided the fiduciary is adequately taking care of the needs of the children from the beneficiary's estate voluntarily or pursuant to a decree of court.

[39 FR 12100, Apr. 3, 1974, as amended at 62 FR 5529, Feb. 6, 1997]

FORFEITURE

§ 3.900 General.

(a) Forfeiture of benefits based on one period of service does not affect entitlement to benefits based on a period of service beginning after the offense causing the prior forfeiture.

(b)(1) Except as provided in paragraph (b)(2) of this section, any offense committed prior to January 1, 1959, may cause a forfeiture and any forfeiture in effect prior to January 1, 1959, will continue to be a bar on and after January 1, 1959.

(Authority: Section 3, Pub. L. 85-857)

(2) Effective September 2, 1959, forfeiture of benefits may not be declared except under the circumstances set forth in § 3.901(d), § 3.902(d), or § 3.903. Forfeitures declared before September 2, 1959, will continue to be a bar on and after that date.

(Authority: 38 U.S.C. 6103(d) and 6105)

§ 3.901

38 CFR Ch. I (7–1–00 Edition)

(c) Pension or compensation payments are not subject to forfeiture because of violation of hospital rules.

(d) When the person primarily entitled has forfeited his or her rights by reason of fraud or a treasonable act determination as to the rights of any dependents of record to benefits under § 3.901(c) or § 3.902(c) may be made upon receipt of an application.

(Authority: 38 U.S.C. 6103(b) and 38 U.S.C. 6104(b))

[26 FR 1607, Feb. 24, 1961, as amended at 27 FR 8590, Aug. 28, 1962; 53 FR 17934, May 19, 1988]

§ 3.901 Fraud.

(a) *Definition.* An act committed when a person knowingly makes or causes to be made or conspires, combines, aids, or assists in, agrees to, arranges for, or in any way procures the making or presentation of a false or fraudulent affidavit, declaration, certificate, statement, voucher, or paper, concerning any claim for benefits under any of the laws administered by the Department of Veterans Affairs (except laws relating to insurance benefits).

(b) *Effect on claim.* For the purposes of paragraph (d) of this section, any person who commits fraud forfeits all rights to benefits under all laws administered by the Department of Veterans Affairs other than laws relating to insurance benefits.

(c) *Forfeiture before September 2, 1959.* Where forfeiture for fraud was declared before September 2, 1959, in the case of a veteran entitled to disability compensation, the compensation payable except for the forfeiture may be paid to the veteran's spouse, children and parents provided the decision to apportion was authorized prior to September 2, 1959. The total amount payable will be the lesser of these amounts:

(Authority: 38 U.S.C. 6103)

(1) Service-connected death benefit payable.

(2) Amount of compensation payable but for the forfeiture.

No benefits are payable to any person who participated in the fraud causing the forfeiture.

(d) *Forfeiture after September 1, 1959.* After September 1, 1959, forfeiture by reason of fraud may be declared only

(1) Where the person was not residing or domiciled in a State as defined in § 3.1(i) at the time of commission of the fraudulent act; or

(2) Where the person ceased to be a resident of or domiciled in a State as defined in § 3.1(i) before expiration of the period during which criminal prosecution could be instituted; or

(3) The fraudulent act was committed in the Philippine Islands.

Where the veteran's rights have been forfeited, no part of his or her benefit may be paid to his or her dependents.

(Authority: 38 U.S.C. 6103)

(e) *Remission of forfeitures imposed prior to September 2, 1959.* Where it is determined that a forfeiture for fraud which was imposed prior to September 2, 1959, would not be imposed under the law and regulation in effect on and after September 2, 1959, the forfeiture shall be remitted effective June 30, 1972. Benefits to which a person becomes eligible by virtue of the remission, upon application therefor, shall be awarded effective as provided by § 3.114.

(Authority: 38 U.S.C. 6103)

[27 FR 8590, Aug. 28, 1962, as amended at 37 FR 19134, Sept. 19, 1972; 53 FR 17934, May 19, 1988]

§ 3.902 Treasonable acts.

(a) *Definition.* An act of mutiny, treason, sabotage or rendering assistance to an enemy of the United States or of its allies.

(b) *Effect on claim.* For the purposes of paragraph (d) of this section, any person determined by the Department of Veterans Affairs to be guilty of a treasonable act forfeits all gratuitous benefits under laws administered by the Department of Veterans Affairs which he or she may be receiving or would have been entitled to receive in the future.

(c) *Forfeiture before September 2, 1959.* Where forfeiture for treasonable acts was declared before September 2, 1959, the Secretary may pay any part of benefits so forfeited to the dependents of